

Congress of the United States
Washington, DC 20515

June 10, 2010

The Honorable Claire McCaskill
Chairman, Senate Rule XI Impeachment Committee
United States Senate
Washington, D.C.

The Honorable Orrin Hatch
Vice Chairman, Senate Rule XI Impeachment Committee
United States Senate
Washington, D.C.

Re: Impeachment of Judge G. Thomas Porteous, Jr. – Preliminary Matters

Dear Senator McCaskill and Senator Hatch:

The purpose of this correspondence is to address the June 9, 2010 letter from Mr. Turley, in which he raises the possibility of a continuance arising from his entry into this case and the decision that Mr. Westling can play no part in addressing Article II involving Judge Porteous's relationship with bail bondsmen Louis Marcotte and his sister Lori Marcotte.

We explicitly raised Mr. Westling's conflict of interest in a letter we sent to him on October 29, 2009 – over seven months ago.¹ That letter put Mr. Westling and Judge Porteous on notice of the conflict of interest and stressed our concern that Judge Porteous would exploit the conflict issue for delay. In that letter, we stated:

As we are also sure you are aware, because of your duties of loyalty to current and prior clients and duties to protect confidential information, if there were to be a hearing where the relationship between the Marcottes and Judge Porteous is at issue, there would be significant conflict of interest issues arising from your participation. Further, those conflict issues may be implicated by your participation in the formulation of a factual defense of Judge Porteous where you are constrained from providing advice due to your ongoing ethical obligations.²

¹See Letter from Reps. Schiff and Goodlatte to Richard W. Westling, Esq., Oct. 29, 2009, (attached as Attachment 1).

²Id.

That letter goes on to cite pertinent Bar rules. In an attempt to head off this issue, we stressed to counsel and Judge Porteous:

We write now to put you and Judge Porteous on notice of the House's concern and so that you and he can take appropriate steps promptly to deal with this situation. We are aware that, in the past, Judge Porteous sought delays in Fifth Circuit proceedings in order for him to obtain new counsel. No delays in our schedule will be permitted to accommodate any search for additional or replacement counsel for Judge Porteous.³

The Marcottes testified on December 10, 2009, before the Impeachment Task Force, some seven weeks after our letter raising the conflict issue. Mr. Westling and Judge Porteous addressed that issue by having Mr. Westling absent himself from the Marcotte hearing. It was further represented that co-counsel, Mr. Remy Starns, would appear in Mr. Westling's stead, but he too did not appear. Articles of Impeachment containing Article II relating to Judge Porteous's relationship with the Marcottes were filed in the House on January 21, 2010, and the House voted the Articles on March 11, 2010.

In our letter to you of April 13, 2010, we again explicitly raised the conflict issue. In that letter we stated:

In a letter dated October 29, 2009, Mr. Schiff and Mr. Goodlatte alerted Mr. Westling to the potential conflict of interest in his taking a role in these proceedings on behalf of Judge Porteous that would require him to take a position or actions adverse to the Marcottes. It would be appropriate that Judge Porteous affirmatively waive any objection to Mr. Westling representing him arising from Mr. Westling's potential conflict so that no issue emerges at trial that would cause Mr. Westling to seek to withdraw and thus delay the proceedings.⁴

Finally, we are informed that on May 18, the conflict issue was raised yet again – this time in connection with an informal meeting of staff. We are informed that in response to direct questioning by Senate Legal Counsel Morgan Frankel, Mr. Westling provided assurances that there would be no delays arising from this conflict of interest issue. Mr. Turley was present at

³Id. (emphasis added).


⁴See Letter from Reps. Schiff and Goodlatte to Sens. McCaskill and Hatch, Apr. 13, 2001, at 5, fn. 5 (attached as Attachment 2).

that meeting, and we understand that he did not contradict Mr. Westling's assurances.

In short, notwithstanding our having raised the conflict issue at the earliest occasion, it was apparently not until June 9 of this year – over seven months after we first raised the issue – that Judge Porteous's defense team determined that Mr. Westling could have no role in matters involving the Marcottes and that a continuance was necessary. No reason was provided for the failure to address this issue over the many months since it was first raised by the House. Despite being on notice that such a claim would be viewed as little more than a cynical attempt to game the system, counsel has nonetheless pursued precisely that very strategy of delay. In light of the record in this case, and the inexcusable delay of Judge Porteous to address the conflict issue until now, Judge Porteous's request for a continuance should be summarily denied.⁵

Sincerely,


Adam Schiff, Manager


Bob Goodlatte, Manager

Attachments

cc: Richard W. Westling, Esq.
Jonathan Turley, Esq.

Morgan Frankel
Senate Legal Counsel

⁵Moreover, the Marcotte allegations are very straight-forward. They are described in detail in the Report; they are primarily supported by witness testimony; and the defense has the transcripts of their Task Force depositions, their House Impeachment Task Force testimony, and the FBI "302s" of both Marcottes as they relate to Judge Porteous.